

## REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed February 28, 2007. The Examiner is thanked for participating in a telephonic interview with the Applicant on Wednesday April 18, 2007 at 12:30 PM PST. In that interview, Applicant explained the support in the specification for Claims 54, 59, 66 and 69. The Examiner is thanked for helpful suggestions for amending Claim 69, which the Applicant has incorporated into this response.

Claims 41-43 and 45-79 were pending in the Application prior to the outstanding Office Action. In the latest Office Action dated February 28, 2007, the Examiner allowed claims 41, 42, 45-53, 55-58 and 60-64. Claims 43, 54, 59 and 65-79 were rejected. Claim 69 is amended. Claims 43, 65, 67, 68 and 70-79 are herein cancelled. Applicant reserves the right to prosecute cancelled claims in continuation or divisional applications.

Claims 41, 42, 45-64, 66 and 69 remain for the Examiner's consideration.

## CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 69, 72 and 73 are rejected under 35 U.S.C. §112, second paragraph, as failing to particularly point out the subject matter which applicant regards as the invention.

In amended Claim 69, the Applicant claims a crossbar where the first beam is totally above the second beam, i.e. the two beams are not fused. In addition, in amended Claim 69, the Applicant claims a crossbar where the first beam is not totally above the second beam, i.e. the two beams are partially fused. Claim 69 is supported in the specification at paragraph [0032], sixth sentence “[a]s is apparent from the side view, the first beam **210** can be configured to sit above the second beam **220**”. Thus in Figure 2B, the first beam of the crossbar is positioned

totally above the second beam of the crossbar. The Applicant directs the Examiner at least to paragraph [0035] where unitary versus adhered construction of the cross bar are disclosed.

Claims 72 and 73 are cancelled.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claims 54, 59 and 66 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Applicant directs the Examiner at least to paragraph [0037], tenth sentence “[a]ccordingly as the patient bends forward or backward the upper plate **110** can pivot or rotate about the beam **210**. When the patient bends laterally or side to side, the lower beam **220** can pivot or rotate in the lower channel **160**, allowing the upper beam **210** to pivot or rotate about the lower beam **220** and also allowing the upper plate **110** to pivot or rotate about the lower beam **220**, and, thus, relative to the lower plate **120”** for literal support for the crossbar pivoting on itself being disclosed.

In view of the above, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §112 rejections.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

Claims 43, 65, 67, 68, 74, and 76-79 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Ferree (U.S. Publication No.: 2004/0106998).

Claims 43, 65, 67, 68, 74 and 76-79 are cancelled.

In view of the above, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §102(e) rejections.

## **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 70, 71 and 75 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Ferree (U.S. Publication No.: 2004/0106998), in view of Marnay (WO 01/01893).

Claims 70, 71 and 75 are cancelled.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 103(a) rejections.

## CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

No fee is believed due in connection with this paper. However, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: May 1, 2007

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